

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1748-02  
Bill No.: SB 423  
Subject: Administrative Law; Business and Commerce; Courts; Environmental Protection;  
Fees; Natural Resources Dept.; Sewers and Sewer Districts; State Departments;  
Water Resources and Water Districts  
Type: Original  
Date: March 29, 2011

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Bill Summary: This proposal modifies various provisions pertaining to the regulation and protection of natural resources.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Unknown > \$100,000)	(Unknown > \$100,000)	(Unknown > \$100,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown &gt; \$100,000)</b>	<b>(Unknown &gt; \$100,000)</b>	<b>(Unknown &gt; \$100,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Safe Drinking Water Fund	(Unknown > \$100,000)	(Unknown > \$100,000)	(Unknown > \$100,000)
Dedicated Fee Funds	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown &gt; \$100,000)</b>	<b>(Unknown &gt; \$100,000)</b>	<b>(Unknown &gt; \$100,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
 This fiscal note contains 12 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Federal Funds	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	Unknown	Unknown	Unknown
Safe Drinking Water Fund	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on FTE</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from the **Missouri House of Representatives, Department of Agriculture, Missouri Senate, and St. Louis County** assume no fiscal impact to their agencies.

Officials at the **Office of the Secretary of State (SOS)** many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's Office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal not to Secretary of State's office for Administrative Rules is less than \$2,500. The Secretary of State's Office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a give year and that collectively the costs may be in excess of what their office can sustain with their core budget. Therefore, they reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of advertising the statewide ballot measure related to this proposal within their current appropriation level. If multiple bills pass or if multiple ballot initiatives are validated which require similar advertising at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Natural Resources (DNR)** assume the following:

#### **Transfer Division of Energy (Section 640.085)**

The act transfers the Department of Natural Resources' Division of Energy to the Department of Economic Development. The transfer must be completed by June 30, 2012.

The department's current budget request includes appropriations for the Division of Energy. The FY2012 Budget Request Governor's Recommendations for the Department of Natural Resources reflects a core of 24 FTE, plus their E&E. In the FY2012 Budget Request Governor's recommendations for the Department of Natural Resources there is a request for 26 FTE, plus their E&E. However, since the budget for FY2012 has not been finalized at this time the fiscal note only reflects a transfer of the core 24 FTE, estimated fringe benefits and related E&E.

ASSUMPTION (continued)

**Public Drinking Water Laboratory Tests (Section 640.100)**

This section transfers responsibility for chemical testing of drinking water from DNR to DHSS. This section also transfers the authority to certify laboratories from DNR to DHSS – including responsibility to certify the DNR laboratory if the DNR laboratory is to continue performing testing.

Currently, Missouri’s laboratory certification program is administered by the DNR. DNR enlists its Division of Environmental Quality, Environmental Services Program and Chemical Analysis Section to handle the laboratory assessments for Chemistry. DNR enlists the DHSS State Public Health Laboratory to handle the laboratory assessments for Microbiology. The Environmental Services Program’s Laboratory is designated as the principal laboratory for chemistry. The designation as principal laboratory requires on-site certification by EPA Region 7. Under Section 644.200 (1.) requires that any laboratory testing conducted by or on behalf of the State of Missouri ... shall be conducted either by a laboratory operated by the department of health and senior services or by a laboratory certified by the DHSS. In order for the DHSS to certify any lab, including a laboratory operated by DNR, they would have to establish and maintain a certification program. If DHSS became the principal laboratory and still enlist DNR to do the chemistry work, DHSS would still have to develop the capability to certify DNR. This would not result in any cost savings to the DNR, as DNR certification program staff have principal analytical and/or supervisory duties that would continue in a full-time capacity.

In addition, the DNR lab certifies four municipal labs (St. Louis (2 labs), Kansas City and Springfield) as well as a handful of private labs (5-8 labs). DNR will no longer perform this certification.

DNR relies upon the Laboratory and Environmental Services Program to provide sound scientific data to serve as the basis for decisions. The lab is closely integrated with the department’s environmental programs.

The ESP serves as the “science arm” of the DNR. Almost any public/private entity involved in scientific study (hospitals, universities, law enforcement forensic, agriculture, chemical company, etc.) has some sort of laboratory to assist in their research, development and generation of data to make good decisions.

If DNR no longer performs testing, close coordination across departments will be critical to ensure sound science based environmental decisions can be made.

**ASSUMPTION** (continued)

Strict Standard Operating Procedures and Chain of Custody requirements are followed to protect the value of samples and test results as evidence. The DNR laboratory and methods are certified by the USEPA through an on-site audit every three years. Thus the DNR laboratory is an EPA certified lab for drinking water chemical testing. The DHSS lab undergoes a similar audit with EPA for the microbiology work they perform related to public drinking water supplies.

**Exemption for Well Construction Requirements (Section 640.116)**

The department would not anticipate a direct fiscal impact as a result of this proposal, as department activities would be related to rulemaking and the addition of checking water usage during inspections.

**Water Pollution Control Fees (Section 644.054)**

Section 644.054.1 of this proposal would extend the existing water permit fee rate structure for wastewater permits imposed under the water pollution statutes until December 31, 2012 (FY 2013). This extension does not affect the department's authority regarding these issues. Based on the number of active permits and the revenue trends seen over the previous two years, this proposal is estimated to generate an estimated \$4.153 million in revenue annually.

**Water Quality Laboratory Testing (Section 644.200)**

For purposes of this fiscal note, the department has assumed that DNR and DHSS would enter into an agreement for DHSS to certify the DNR laboratory and operations would continue as is except that DHSS would be required to certify not only the DNR laboratory but also any local or private laboratories performing chemical analysis of drinking water samples.

It is assumed that one (1) FTE would be requested to implement the requirements in Section 644.200 to directly transmit results to outside entities within 48 hours. It is anticipated the FTE would be responsible for maintaining and updating automatic delivery of results to DHSS. The FTE would also act as a contact person between the sample collector(s) and DHSS. Other duties would include, updating mailing addresses in LIMS, fielding questions/issues regarding sample results, from the public; public water supplies; department and other agency collectors; and ensuring reports are provided within the 48 hour timeframe. The proposed bill does not appear to provide funding source for this additional work effort, therefore, General Revenue funding is being requested. Since this reporting requirement does not go into effect until on or after July 1, 2013, the fiscal impact would not occur until FY2014.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services** assume the following:

**Section 37.970**

The requirement that any request for information be interpreted as a Sunshine request could require DHSS to respond to request for information much more timely. The statute requires that any data collected in the course of its duties shall be made available to the public in a timely matter. However it states that this section shall not be construed to limit or exceed the requirements of the provisions in Chapter 610. There is an argument that could be made that this section would apply to all requests, even a request for a birth or death certificate. This would require us to have a response within three working days or face action and fines. This broad interpretation could also include discovery requests, thus speeding up the time a response is needed.

The cost is unknown at this time, as it is impossible to estimate as to which requests this section would apply or and how many such requests are received.

**Section 192.1250**

The proposed section requires DHSS to examine the feasibility of implementing a real-time water quality testing system in the state and report its findings to the general assembly by December 31, 2011. It is not clear as to the intent and definition of a real-time water quality testing system, therefore the fiscal impact is unknown for this section.

**Section 640.100.3**

This section directs the analysis of all drinking water to be completed by the DHSS laboratories or laboratories certified by the DHSS. The DHSS, State Public Health Lab (SPHL) does not currently have the capacity (staff, funding, or space) to conduct all drinking water testing for the State of Missouri. In addition, DHSS does not have delegated authority for laboratory certification. The Environmental Protection Agency delegates authority for laboratory certification to the state primacy agency which is the Department of Natural Resources for Missouri. This would involve the development of a new program to certify laboratories to perform this testing. The fiscal impact is (Unknown, > \$100,000). DHSS assumes funding from the Safe Drinking Water Fund may be available to fulfill the department's responsibilities of this fund, however at this time, the department is not able to determine the cost or available revenues from this fund.

ASSUMPTION (continued)

**Section 644.200.1**

This proposed section refers to the testing of waste water and directs all testing be conducted either by a laboratory operated or certified by the DHSS. DHSS, SPHL does not currently have expertise on waste water testing and due to contamination issues cannot test waste water where drinking water is currently tested. Currently there is no waste water laboratory certification program in Missouri. This would involve the development of a new program to certify laboratories to perform this testing. The fiscal impact is (Unknown, > \$100,000).

**Section 644.200.2 and 644.200.3**

The proposed language requires the SPHL to make test results for purposes authorized under chapter 644 and Sections 640.100 to 640.140 to be available to the public within 48 hours. In addition, Section 644.200.3 requires the SPHL to report test results to the submitter within 48 hours. DHSS currently relies on a paper-based system and the U.S. Postal Service to deliver test results. To meet the 48 hour reporting requirement would require a large investment in expanding the laboratory information management system (LIMS) and electronic reporting capabilities. There would be extensive ITSD costs in order to develop/modify the current LIMS to be compatible with the requirements of the bill. At this time the department is not able to estimate the cost of this provision. The fiscal impact is (Unknown, > \$100,000).

**Section 701.033.1(5)**

The proposed language requires DHSS to provide technical assistance, guidance, and oversight regarding the regulation and enforcement of standards for on-site sewage disposal systems upon request or if the department determines that such assistance or oversight is necessary to prevent a violation. DHSS is unable to determine how many requests for technical assistance will develop as a result of this language, therefore the impact for this section is (unknown).

Officials from the **Department of Economic Development (DED)** assume this proposal transfers the Department of Natural Resources' Division of Energy to the Department of Economic Development. The transfer must be completed by June 30, 2012.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
<b>GENERAL REVENUE</b>			
<u>Expense</u> - Department of Natural Resources (DNR)			
Salaries	\$0	\$0	(\$38,591)
Fringe Benefits	\$0	\$0	(\$20,199)
Equipment & Expense	<u>\$0</u>	<u>\$0</u>	<u>(\$13,780)</u>
Total	<u>\$0</u>	<u>\$0</u>	<u>(\$72,570)</u>
Estimated FTE 1 DNR	0	0	1
<u>Expense</u> - Department of Health & Senior Services (DHSS)	(Unknown)	(Unknown)	(Unknown)
Salaries	(Unknown)	(Unknown)	(Unknown)
Fringe Benefits	(Unknown)	(Unknown)	(Unknown)
Equipment & Expense	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Total	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Estimated FTE DHSS	Unknown	Unknown	Unknown
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(Unknown &gt; \$100,000)</u></b>	<b><u>(Unknown &gt; \$100,000)</u></b>	<b><u>(Unknown &gt; \$100,000)</u></b>
Estimated Net FTE	Unknown	Unknown	Unknown



<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
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**SAFE DRINKING WATER FUND**

<u>Expense-</u> Department of Health & Senior Services	(Unknown)	(Unknown)	(Unknown)
Salaries	(Unknown)	(Unknown)	(Unknown)
Fringe Benefits	(Unknown)	(Unknown)	(Unknown)
Equipment & Expense	(Unknown)	(Unknown)	(Unknown)
Total	(Unknown)	(Unknown)	(Unknown)

<b>ESTIMATED NET EFFECT ON SAFE DRINKING WATER FUND</b>	<b><u>(Unknown &gt; \$100,000)</u></b>	<b><u>(Unknown &gt; \$100,000)</u></b>	<b><u>(Unknown &gt; \$100,000)</u></b>
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Estimated FTE	Unknown	Unknown	Unknown
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**DEDICATED FEE FUNDS**

<u>Transfer Out</u> - Department of Natural Resources			
Administrative Transfers (OA - ITSD)	\$0	\$218,500	\$218,500
Administrative Transfers (DNR)	<u>\$0</u>	<u>\$120,000</u>	<u>\$120,000</u>
Total	<u>\$0</u>	<u>\$338,500</u>	<u>\$338,500</u>

<u>Transfer In</u> - Department of Economic Development			
Administrative Transfers (OA - ITSD)	\$0	(\$218,500)	(\$218,500)
Administrative Transfers (DNR)	<u>\$0</u>	<u>(\$120,000)</u>	<u>(\$120,000)</u>
Total	<u>\$0</u>	<u>(\$338,500)</u>	<u>(\$338,500)</u>

<b>ESTIMATED NET EFFECT ON DEDICATED FEE FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
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<u>FISCAL IMPACT - Federal Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
<u>Transfer Out - Department of Natural Resources (DNR)</u>			
Salaries	\$0	\$1,143,768	\$1,143,768
Fringe Benefits	\$0	\$598,648	\$598,648
Equipment & Expense	<u>\$0</u>	<u>\$3,134,279</u>	<u>\$3,134,279</u>
Total	<u>\$0</u>	<u>\$4,876,695</u>	<u>\$4,876,695</u>
Estimated FTE DNR	0	(24)	(24)
<u>Transfer In - Department of Economic Development (DED)</u>			
Salaries	\$0	(\$1,143,768)	(\$1,143,768)
Fringe Benefits	\$0	(\$598,648)	(\$598,648)
Equipment & Expense	<u>\$0</u>	<u>(\$3,134,279)</u>	<u>(\$3,134,279)</u>
Total	<u>\$0</u>	<u>(\$4,876,695)</u>	<u>(\$4,876,695)</u>
Estimated FTE DED	0	24	24
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

**Administrative Hearing Commission (Section 621.250)**

This legislation has the potential to have an economic impact on small business as the business may choose to have legal representation before the Administrative Hearings Commission rather than representing themselves during the appeals process. Additionally, the proposed section 621.250.7 provides for the notice of appeal to be accompanied

**FISCAL IMPACT - Small Business (continued)**

by a surety bond when the notice is filed by other than the applicant for the permit. A small business filing a notice of appeal, when they are not the applicant for the permit, would bear the cost of the surety bond.

Small business could be impacted by a change in the financial assurance instruments available to them as a result of the change in the appeals process. Small businesses frequently obtain lines of credit with their local banking institution. With Administrative Hearings Commission (AHC) involvement potentially lengthening the timeframe for resolution of appeals past the amount of time for lapsing of financial assurance instruments, the Department would likely cease taking lines of credit as an acceptable form of financial assurance. The initial costs of obtaining surety and other bonds routinely are approximately 10% of the face value of the bond.

**Additional Permit Requirements (Section 640.018)**

Small businesses may also feel compelled to hire a licensed Professional Engineer to submit documents to the Department, assuming this would speed up the permit process. Currently, many small businesses use in-house staff, not Professional Engineers, to fill out their paperwork and submit it to the Department for review.

**Water Pollution Control Fees (Section 644.054)**

No additional impact on small business is anticipated. Small businesses that meet the requirements to secure Missouri State Operating Permits for discharge of pollutants into the waters of the state are currently paying these fees, which are now expired as of December 31, 2010.

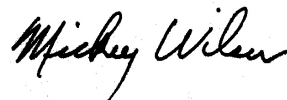
**FISCAL DESCRIPTION**

The proposed legislation modifies various provisions pertaining to the regulation and protection of natural resources.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri House of Representatives  
Department of Natural Resources  
Department of Agriculture  
Missouri Senate  
Department of Health and Senior Services  
St. Louis County  
Secretary of State's Office  
Department of Economic Development

A handwritten signature in black ink, reading "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
March 29, 2011